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JONATHAN P. DANIELS, Appellant)	
)	
and)	Docket No. 04-771
)	Issued: June 28, 2004
DEPARTMENT OF THE INTERIOR, U.S.)	
PARK POLICE, Washington, DC, Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

On February 2, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated January 12, 2004, that awarded him \$2,000.00 for a disfigurement sustained in the performance of his federal duties. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of this case.

The issue is whether appellant is entitled to a schedule award greater than \$2,000.00 for facial disfigurement.

On April 13, 2000 appellant, then a 28-year-old police officer was shot in the face while in pursuit of a suspect. On April 21, 2000 appellant underwent left parotid and facial nerve exploration, a left mastoidectomy with facial nerve decompression, a left greater auricular interposition graft for repair of the seventh cranial nerve and attachment of a gold weight to the

left upper eyelid. In late April 2000, the Office accepted appellant's claim for a gunshot wound to the face (left anterior maxilla) and multiple fractures of facial bones (including the left coronoid process, left mandible and left occipital condyle). Appellant returned to work in a light-duty capacity on August 1, 2000.

On December 11, 2001 appellant requested a schedule award. In support of his request appellant submitted a July 11, 2001 report from Dr. Edward Krowiak, an otolaryngologist, who stated that, on examination he found a left facial scar 12 centimeters in length and left facial nerve paralysis, Grade 5/6 in all branches. He further noted that it was improbable that appellant's disfigurement would improve significantly. Dr. Krowiak opined that appellant had a Class 2 facial nerve impairment for a 19 percent impairment of the whole person for severe facial paralysis with involvement of all 5 branches based on Table 13-12 of American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).

In a September 27, 2002 memorandum to the file, Herman Cain, the district director, stated that, on August 7, 2002 he and a supervisory claims examiner met with appellant regarding his request for a disfigurement award. His residual scar and nerve damage was observed and described as noticeable.¹ In a September 27, 2002 decision, a disfigurement award of \$1,350.00 was determined to be fair and adequate. In October 9, 2002 decisions, the Office found that a facial disfigurement award of \$1,350.00 was determined to be reasonable compensation for appellant's disfigurement. The Office also found that appellant was not entitled to any other schedule award, in addition to that granted for disfigurement, because the face was not otherwise a scheduled member of the body.

In an October 6, 2003 letter, appellant requested reconsideration through his representative who argued that \$1,350.00 was not enough, noting that the disfigurement was facial and could not be covered and that the paralysis effected appellant's ability to speak in a normal fashion.

The file contains a January 7, 2004 report from Dr. Willie Thompson, a Board-certified orthopedic surgeon and the acting district medical adviser, who stated that appellant had a significant scar over the posterior aspect of the left ear and the cheek. Applying the A.M.A., *Guides* (5th ed. 2001) ratings for disfigurement, he found a Class 1 impairment for skin disorder; meaning the impairment required no treatment and caused no off-duty limitations in the performance of his daily activities. Dr. Thompson applied Table 8-200, page 178 of the A.M.A., *Guides* and determined that this impairment equated to a nine percent impairment to the whole person.

In a January 12, 2004 memorandum to the file, Patricia Greene, the assistant district director stated that, on January 7, 2004 she, along with Dr. Thompson, acting as the district medical adviser, met with appellant for a disfigurement evaluation that revealed a significant scar over the posterior aspect of the left ear at the site of the attempted nerve grafting and over the left cheek. She noted that the scar is not noticeable when looking directly at appellant, but is clearly

¹ Mr. Cain stated that the scar was "terribly disfiguring" but the context of the statement suggests that he actually meant to say that the scar was not terribly disfiguring.

visible when looked at from the left side. Ms. Greene stated that appellant returned to his date-of-injury job and has subsequently been promoted. She added that while his impairment has not handicapped appellant from securing or maintaining employment, he does have a visible disfigurement, aside from the scar, that was not considered in the August 7, 2002 interview. Ms. Greene stated that the left side of appellant's face had a noticeable deformity due to nerve damage and it appears the entire left side of his face suffers from some degree of paralysis. She noted that appellant cannot smile as the left side of his mouth does not move and appellant has a lazy left eye and is unable to squint or blink. Ms. Greene stated that appellant reported that his speech was impaired when he became excited causing him to drool from the left side of his mouth. She noted that appellant also said he comes into contact with the public all the time and feels self-conscious when looked at. Appellant also stated that he will occasionally injure himself by biting his tongue or other soft tissue on the left side and is therefore relegated to chewing on the right side. Ms. Greene found appellant entitled to a \$2,000.00 schedule award; meaning he was to receive an additional award of \$650.00.

In a January 12, 2004 decision, the Office vacated the October 9, 2002 decision and awarded appellant \$2,000.00. The Office noted that it was determined that his disfigurement would likely handicap his ability to secure employment, but that there was no loss of use or loss of a scheduled member under section 8107 and that left facial nerve damage and paralysis are not covered by the Federal Employees' Compensation Act. The decision stated that the maximum amount provided for disfigurement under section 8107(c)(21) of the Act was \$3,500.00.

LEGAL PRECEDENT

The Act² provides in section 8107(c)(21) that "[f]or serious disfigurement of the face, head or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed \$3,500.00 shall be awarded in addition to any other compensation payable under this schedule."³ In a case involving disfigurement, the question before the Board is whether the amount awarded by the Office was based upon sound and considered judgment and was "proper and equitable" under the circumstances as provided by section 8107(c)(21) of the Act. In determining what constitutes "proper and equitable compensation" for disfigurement, sound judgment and equitable evaluation must be exercised as to the likely economic effect of appellant's disfigurement in securing and maintaining employment.⁴

The Board has recognized that Office deputy commissioners, Office assistant deputy commissioners, Office chiefs of branch of claims, Office district directors and similar officials, because of their expertise, have the status of experts in evaluating disfigurement for schedule award purposes so long as they personally view the disfigurement.⁵ Office procedure delineates

² 5 U.S.C. § 8101 *et seq.*

³ 5 U.S.C. § 8107(c)(21).

⁴ *Mark A. Wages*, 39 ECAB 282, 287 (1987).

⁵ *Gary W. Blanch*, 44 ECAB 865, 868-69 (1993); *Alfred T. Baldwin*, 30 ECAB 734, 735 (1979).

the method for evaluating a claimant's entitlement to a schedule award for disfigurement, a process which includes personal examination of the claimant by Office officials.⁶

The Office has broad administrative discretion in choosing means to achieve its general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time possible. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁷ The Board will not interfere with or set aside a disfigurement determination of the Office unless it is clearly in error.⁸

ANALYSIS

The Office in determining that appellant was entitled to a \$2,000.00 award for disfigurement, took into consideration the proper factors and circumstances and made a sound and considered judgment which was proper and equitable under section 8107(c)(21) of the Act and which did not demonstrate clear error. In arriving at its decision Ms. Greene, the assistant district director who personally examined appellant, noted that he had a significant scar over the posterior aspect of the left ear that was clearly visible when looked at from the left side. She also noted that the disfigurement did not prevent appellant from working as he returned to his date-of-injury job and subsequently was promoted, but he did have a visible disfigurement, aside from the scar, that was not considered in the August 7, 2002 interview. Ms. Greene explained that the left side of appellant's face had a noticeable deformity due to nerve damage and some degree of paralysis that prevented him from smiling and created a lazy left eye. She noted that appellant reported that his speech was impaired when he became excited causing him to drool from the left side of his mouth and that the disfigurement caused him to feel conscientious when looked at and the paralysis relegated him to chewing on the right side.

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts. The Board finds that such a condition does not exist in the present case. Therefore, the Office did not abuse its discretion in determining that appellant was not entitled to a disfigurement award greater than \$2,000.00.⁹

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.8 (August 2002). The personal examination takes place after it has been determined that the claimed disfigurement has reached maximum improvement.

⁷ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁸ *Matthew Leonka*, 38 ECAB 119, 121 (1986).

⁹ The Office also properly determined that appellant was not entitled to any other schedule award, in addition to that granted for facial disfigurement. The record contains reports in which physicians provided impairment ratings based on the face or the whole person. However, a schedule award is not payable under section 8107 of the Act for an impairment of the face or the whole person. See 5 U.S.C. § 8107; *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

CONCLUSION

Appellant has not established that he is entitled to greater than a \$2,000.00 award for disfigurement.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2004 decision by the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member